

**REMARKS**

Reconsideration of this application and the rejection of claims 1-4, 8-20, and 23-25 are respectfully requested. Applicant has attempted to address every objection and ground for rejection in the Office Action dated June 22, 2005 and believes the application is now in condition for allowance. The claims have been amended to more clearly describe the present invention.

Applicant acknowledges that the allowability of original claims 7-11 and 22-24 was withdrawn in view of newly discovered references.

Claims 1-4, 14, 15, 20 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brenchley et al. (U.S. Pub. No. 2004/0246711 A1) in view of Jensen et al. (U.S. Pub. No. 2003/0035291 A1). Brenchley discloses a candle 250 including a jar 254 having a void 262 in the bottom configured for receiving a light attachment 266. (FIG. 5c; par. 060, ll. 1-5). Jensen discloses a candle 10 having a body 12 with an enlarged lower cavity 38 holding a battery housing 36 containing two batteries 40, 42, a printed circuit board 44 and light source energization electronics 46. A light 24 is positioned within cavity 38 outside of housing 36. (FIG. 3; par. 0026, ll. 1-8).

Neither Brenchley nor Jensen, either alone or in combination, disclose or suggest all of the features recited in claims 1 and 20 of the present application, from which claims 2-4, 14, 15 and 25 either directly or indirectly depend. The Examiner recognizes Brenchley's failure to disclose a power source enclosed within the insert, a circuit board and a flickering means, and contends

that it would have been obvious to modify Branchley to include the battery housing of Jensen. However, Applicant submits that Branchley teaches against the use of batteries, because it states that “generating heat from electricity consumes significant amounts of power, and batter [sic] will drain quickly under the load.” (par. 0038, ll. 1-3). Accordingly, Branchley specifically discloses the use of an electrical cord for supplying A/C power to the candle, rather than a battery. Applicant submits that Branchley teaches against the proposed modification, and accordingly, Applicant respectfully traverses the rejection of claims 1-4, 14, 15, 20 and 25 under 35 U.S.C. § 103(a).

Claims 8 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Branchley in view of Jensen and further in view of Bonnema et al. (U.S. Pub. No. 2003/0067770 A1). The arguments stated above traversing Branchley and Jensen are reasserted here. Bonnema discloses a suspended light source holder 40 for a jack-o-lantern, the holder having a non-opaque windscreen member 64 designed to protect a flame of the candle, the preferred light source. (FIG. 2; par. 0040, ll. 7-15).

None of Branchley, Jensen or Bonnema, either alone or in combination, disclose or suggest all of the features recited in claims 1 and 20, from which claims 8 and 23 respectively depend. The Examiner contends that it would have been obvious to modify the apparatus of Branchley and Jensen to include the non-opaque windscreen member disclosed in Bonnema. Applicant submits that there is no incentive or suggestion to modify Branchley as proposed

by the Examiner. As stated above, Branchley teaches against the use of batteries, and therefore there is no motivation or incentive to modify Branchley to include the battery housing of Jensen. Furthermore, the windscreen member 64 of Bonnema is not an enclosed insert as recited in claim 1 of the present application, but rather a screen partially surrounding the suspended candle 40 (see FIG. 2). Therefore, even if Branchley were to be modified as suggested, it would still fail to include all of the features recited in the present application. Accordingly, Applicant respectfully traverses the rejection of claims 8 and 23 under § 103(a).

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Branchley in view of Jensen and Bonnema and further in view of Lombardi (U.S. Pat. No. 3,994,502). The arguments asserted above traversing Branchley, Jensen and Bonnema are reasserted here. Lombardi discloses an audible candle holder 10 secured to a top planar surface 18 of a hollow cylindrical metal base 20, where batteries 32 are loaded into the base via a door 34 in the circular sidewall 36 of the base. (FIG. 1; col. 2, ll. 1-20).

Applicant submits that none of the references, either alone or in combination, disclose or suggest all of the features of claim 1, from which claim 9 indirectly depends. The Examiner contends that it would have been obvious to modify Branchley, Jensen and Bonnema to include a door to enable easy access to the batteries, as disclosed in Lombardi. Applicant submits that there is no incentive or suggestion to modify the references as proposed. Specifically, as stated above, Branchley teaches away from the use of batteries, so there is no

incentive to modify Brenchley to include the battery housing of Jensen. Further, the door in Lombardi is not located in an enclosed insert, as recited in the present application, and there is no incentive or suggestion to modify Brenchley, Jensen or Bonnema to include such a door. Accordingly, Applicant respectfully traverses the rejection of claim 9 under § 103(a).

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Brenchley in view of Jensen, Bonnema and Lombardi, and further in view of McKinney (U.S. Pat. No. 6,669,352). The arguments made above traversing Brenchley, Jensen, Bonnema and Lombardi are restated here. McKinney discloses a novelty lighting device 10 submerged in a transparent fluid 12 and including an upper transparent, spherical dome portion 20 mounted on a cylindrical lower base portion 24. (Col. 2, ll. 26-35; FIG. 1).

None of the above references, either alone or in combination, suggest or disclose all of the features recited in claim 1, from which claim 10 indirectly depends. The Examiner contends that it would have been obvious to modify the enclosed insert apparatus of Brenchley, Jensen, Bonnema and Lombardi to include the spherical dome portion disclosed in McKinney. However, Applicant submits that based on the arguments made above with respect to Brenchley, even if the proposed modifications were made, the modified apparatus would still fail to include all of the features recited in the present application, because Brenchley teaches against the use of batteries as claimed. Further, there is no incentive or suggestion to modify the references as proposed,

and accordingly, Applicant respectfully traverses the rejection of claim 10 under § 103(a).

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Branchley in view of Jensen, Bonnema, Lombardi and McKinney and further in view of Klein (U.S. Pat. No. 1,950,369). The arguments stated above traversing Branchley, Jensen, Bonnema, Lombardi and McKinney are reasserted here. Klein discloses a flash light baton 10 provided with a cavity 11 in which a battery 15 is inserted. A cap 25 having projections 29 is configured to close the cavity 11, and the projections are configured to engage corresponding recesses 24. (FIG. 3; col. 1, ll. 36-38 and ll. 53-54; col. 2, ll. 56-66).

Applicant submits that none of the references, either alone or in combination, disclose or suggest all of the features recited in claim 1, from which claim 11 indirectly depends. The Examiner contends that it would have been obvious to modify the references to include the cap as disclosed in Klein. Furthermore, Applicant submits that there is no incentive or motivation in any of the references to modify the apparatus as proposed by the Examiner. Accordingly, Applicant respectfully traverses the rejection of claim 11 under § 103(a).

Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Branchley in view of Jensen and further in view of Lindner (U.S. Pat. No. 5,490,045). The arguments made above traversing Branchley and Jensen are reasserted here. Lindner discloses a light source 20 for use in highway

barrier illumination that can last approximately 1100 continuous hours. (Col. 2, ll. 26-30).

Applicant contends that none of the references, either alone or in combination, either disclose or suggest all of the features recited in claim 1, from which claims 12 and 13 indirectly depend. The Examiner contends that it would have been obvious to modify the apparatus of Brenchley and Jensen to include the light source disclosed in Lindner in order to provide a greater number of continuous hours of operation. Applicant submits that there is no incentive or suggestion to modify the references as proposed, especially with Brenchley and Jensen, since Lindner is related to a totally nonanalogous application. Accordingly, Applicant respectfully traverses the rejection of claims 12 and 13 under § 103(a).

Claim 16 stands rejected as being unpatentable over Brenchley in view of Jensen and further in view of Kitchen (U.S. Pub. No. 2003/0198045 A1). The arguments asserted above traversing Brenchley and Jensen are reasserted here. Kitchen discloses a flameless candle 1 that can be wired to use a low power 555-timer as its power supply.

None of Brenchley, Jensen or Kitchen, either alone or in combination, disclose or suggest all of the features of claim 1, from which claim 16 indirectly depends. The Examiner argues that it would have been obvious to modify the apparatus of Brenchley and Jensen to include a 555-timer as disclosed in Kitchen. However, Applicant contends that because Brenchley teaches against

the use of a battery, there is no incentive to use a 555-timer because it allows the candle to accommodate a battery. (see par. 0025, ll. 1-4). Accordingly, Applicant submits that because use of a 555-timer implies/requires the need for a battery, it would not have been obvious to modify Brenchley and Jensen as proposed by the Examiner. Accordingly, Applicant respectfully traverses the rejection of claim 16 under § 103(a).

Claims 14 and 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brenchley in view of Jensen and further in view of Moore (U.S. Pat. No. 6,688,752). The Examiner argues that it would have been obvious to modify the apparatus of Brenchley and Jensen to include a microcontroller, as disclosed in Moore. The arguments made above traversing Brenchley and Jensen are reasserted here. Moore discloses an electronically simulated flame or torch 12 that is powered by a DC source 28 and controlled by a computer 30, a portion of which is a microcontroller 34.

Applicant submits that none of Brenchley, Jensen or Moore, either alone or in combination, disclose or suggest all of the features recited in claim 1, from which claims 14 and 17-19 either directly or indirectly depend. Applicant submits that there is no incentive or motivation to modify the reference as proposed, and accordingly, Applicant respectfully traverses the rejection of claims 14 and 17-19 under § 103(a).

Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Brenchley in view of Jensen and Bonnema and further in view

of McKinney. The arguments made above traversing Brenchley, Jensen, Bonnema and McKinney are reasserted here.

None of the cited references, either alone or in combination, disclose or suggest all of the features recited in claim 20, from which claim 24 indirectly depends. The Examiner argues that it would have been obvious to modify the apparatus of Brenchley so that the bottom end of the insert is coplanar with the wax body, as disclosed in Jensen. The Examiner further argues that it would have been obvious to further modify Brenchley to include a door, as disclosed in McKinney, allowing easy access to the battery. However, Applicant contends that there is no incentive or motivation to modify Brenchley as proposed. Indeed, as argued above, Brenchley teaches against the use of a battery. Accordingly, Applicant respectfully traverses the rejection of claim 24 under § 103(a).

Applicant respectfully submits that the Examiner has failed to meet the standards necessary for a *prima facie* case of obviousness. Indeed, the Examiner has failed to indicate any specific points in the references that suggest or disclose the modifications proposed. Further, the Examiner has failed to indicate any specific points in the references that show an incentive or motivation to combine the references as suggested. Accordingly, Applicant submits that the requirements for *prima facie* obviousness have not been satisfied, and respectfully traverses the rejections of the claims under 35 U.S.C. § 103(a).

In view of the above amendments, the application is respectfully submitted to be in allowable form. Allowance of the rejected claims is respectfully

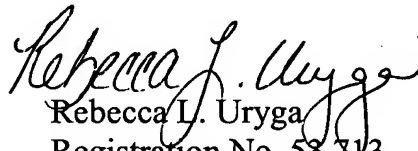


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requested. Should the Examiner discover there are remaining issues which may be resolved by a telephone interview, he is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

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